

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-CV-10463

FOUR HUNDRED SEVENTY SEVEN (477)  
FIREARMS,

Defendants.

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**ORDER DENYING REQUEST FOR STAY AND DIRECTING THE CLAIMANTS TO  
SUBMIT GABRIEL KISH III'S AMENDED AFFIDAVIT, SIGNED OR UNSIGNED, AND  
A COMPLETE COPY OF GABRIEL KISH III'S WILL**

On December 15, 2009, the Government filed a "Motion to Strike Claims of Gabriel Kish, IV, Gregory Kish, and Sherry Harness Based Upon Lack of Article III, Section 2 or Statutory Standing." In their response, the Claimants attached as exhibit five an unsigned affidavit from Gabriel Kish III. The Claimants stated that the "assertions in this Affidavit were related orally by Gabe Kish, III to his counsel. The Affidavit had been sent to him, in prison, for his signature and will be filed upon receipt." (Resp. at 5 n.3.) To date, a signed affidavit has not been filed.

On March 3, 2010, Claimants filed a "Notice of Substitution of Exhibit 5 to Claimants' Response to Plaintiff's Motion to Strike Claims and Request for Stay of Action on this Motion." In the notice, the Claimant's counsel states that she "recently received a letter from Mr. Kish indicating that the assertions in the Affidavit were incorrect and/or incomplete." (3/3/10 Notice at 2.) Thus, she sent him an amended affidavit for approval and signature on March 2, 2010. (*Id.*) The Claimants "request that the court not hold oral argument or render a decision on the motion until the substitute

exhibit 5 has been filed.” (*Id.*) The court will deny this request. However, it may consider the amended affidavit, signed or unsigned, if it is submitted to the court by **March 10, 2010**.

In addition, the Claimants submitted an incomplete copy of Gabriel Kish III’s will in exhibit four of their response. They stated that a “complete copy will be submitted after February 1, 2010, when Gabe IV returns from vacation. The original Will is locked in his safe and no one else has access or copies.” (Resp. at 2 n.1.) It is now over a month after February 1, 2010, and the Claimants have not submitted a complete copy of the will. Thus, the court will direct the Claimants to submit a complete copy of the will by **March 10, 2010**.

Gabriel Kish III’s prior “affidavit” discusses his intention to make an intervivos gift of the firearms when he executed his will. To the extent that the amended affidavit makes similar allegations, the court will not consider these allegations unless a completed copy of the will is provided to the court. Accordingly,

IT IS ORDERED that the Claimants’ “Notice of Substitution of Exhibit 5 to Claimants’ Response to Plaintiff’s Motion to Strike Claims and Request for Stay of Action on this Motion” [Dkt. #66] is DENIED. The Claimants are DIRECTED to submit Gabriel Kish III’s amended affidavit, signed or unsigned, and a complete copy of Gabriel Kish III’s will by **March 10, 2010**. If a completed copy of the will is not submitted to the court by this deadline, the court will not consider aspects of Gabriel Kish III’s amended affidavit addressing his intentions when executing his will.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 5, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 5, 2010, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522